

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

YOR920030005US1

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Typed or printed name _____

Application Number

10/674926

Filed

09/30/2003

First Named Inventor

Claus Michael Olsen

Art Unit

2187

Examiner

Matthew A. Bradley

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

☐ applicant/inventor.

/Michael J. Buchenhorner/

☐ assignee of record of the entire interest.
See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96)

Signature

Michael J. Buchenhorner

Typed or printed name

☒ attorney or agent of record.
Registration number 33162

305 273-8007

Telephone number

☐ attorney or agent acting under 37 CFR 1.34.
Registration number if acting under 37 CFR 1.34 _____

April 7, 2009

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.
Submit multiple forms if more than one signature is required, see below.

☒ *Total of 5 forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.	:	10/674,926
Applicant	:	Claus Michael Olsen, et al.
Filed	:	September 30, 2003
TC/A.U.	:	2187
Examiner	:	Bradley, Matthew A.
Docket No.	:	YOR920030005US1
For	:	Apparatus for Reducing Accesses to Levels of a Storage Hierarchy in a Computing System

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**REASONS IN SUPPORT OF APPLICANTS'
PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Sir:

This document is submitted in support of the Pre-Appeal Brief Request for Review filed herewith, concurrently with a Notice of Appeal in compliance with 37 C.F.R. 41.31 and with the rules set forth in the Official Gazette of July 12, 2005 for the New Appeal Brief Conference Pilot Program.

Applicants respectfully request a Pre-Appeal Brief Review (hereafter "Request") of the claims finally rejected in the Final Office Action mailed November 29, 2007. The Request is provided herewith in accordance with the rules set out in the Official Gazette dated July 12, 2005. The request is necessary because the final rejection is clearly in error.

Claims Status

Claims 21-22, 24-35, and 37-38 have been rejected under 35 USC §103(a) as being obvious over *Rudelic et al.* (U.S. 2004/0255283, hereafter *Rudelic*) in view of U.S. Patent 6,836,824 (6,836,824, hereafter *Mirov*). The Examiner argued that claim 21 was rendered obvious by the combination of *Rudelic* and *Mirov*, alleging that the claimed element of “first and second levels of a non-volatile storage” were taught by *Rudelic* but admitted that *Rudelic* did not teach “a processor configured for writing information to the second level of storage based on energy-conserving criteria, wherein the energy-conserving criteria comprise system state information, and wherein said system state information is selected from a type of energy source powering the system.” For the second element the Examiner argued that *Mirov* taught that limitation. Applicants contend that this is clear error that should be reversed. *Mirov* teaches a variable power supply that may be adjusted according to the requirements of the system. The variable power supply of *Mirov* does not control storage of information according to the power available. The teaching is just the opposite of what the claim requires, which is a processor that controls the writing of information to a lower energy consuming level of storage based on the type of energy source powering the system, such that when the energy source produces a low level of energy, a level of storage is used that consumes less energy.

Claims 22 and 24-35 depend on claim 21 and thus include the limitations discussed above and hence are not obvious in view of the combination of *Rudelic* and *Mirov*.

Claim 37 is an independent claim directed to a method of managing storage of information that includes a limitation substantially equivalent to that discussed above with respect to claim 21. As shown above, the combination of *Rudelic* and *Mirov* does not teach or suggest storage of data in unmanaged storage depending on the type of energy source powering the system. Claim 38 is an article of manufacture counterpart of claim 37 and is patentable over the cited references for at least the same reasons as discussed above.

Serial No. 10/674,926
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Respectfully submitted,

/Michael J. Buchenhorner/

Michael J. Buchenhorner

Reg. No. 33,162

Electronically filed on Date: April 7, 2009